

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-13037-2019 IN/AND

230-CRM-A-816-2019

Date of Decision: 07.12.2022

Panipat Hire Purchase & Leasing Pvt.Ltd.

... Applicant

VS.

Rajesh Walia

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Pawan Kumar Hooda, Advocate for the applicant

Sandeep Moudgil, J.

CRM-13037-2019

This appeal has been filed, along with an application under Section 5 of the Limitation Act seeking condonation of delay of 647 days in filing the appeal, against the judgment dated 15.03.2017 passed by learned JMIC, Chandigarh vide which the complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, 1881 (in short, the NI Act) has been dismissed and the respondent has been acquitted on the ground that the applicant has not been able to prove its case against the respondent beyond reasonable doubts

Learned counsel for the applicant extended a loan of Rs.1,50,000/- on 04.04.2013 by cash to the accused at Chandigarh, which was repayable on 04.10.2013 along with interest @ 3% per month and executed a Pronote-cum-Receipt Memorandum of Terms and Conditions, in this regard, at Chandigarh. In discharge of above said liability, accused issued cheque dated 16.12.2013 for 1,86,000/- but the same was returned unpaid with remarks "Insufficient Funds". A complaint was filed under Section 138 of the

NI Act which has been dismissed by JMIC, Chandigarh vide judgment dated 15.03.2017.

Learned counsel for the applicant has also filed application for condonation of delay of 647 days in filing the appeal and the grounds taken is that the whole file of the present case was got misplaced in the office of the staff of the applicant-company due to which some delay in filing the appeal has occurred.

Having heard ld.counsel for the applicant and going through the case file, this Court is of the considered opinion that there is no illegality or infirmity in the judgment passed by the trial court.

The reasons given for delay is wholly cryptic and baseless as there is nothing on record to show as to when copy of the judgment was received, and what steps were taken by the applicant to file appeal during the period it went in hibernation for almost about 2 years.

The Hon'ble Bombay High Court in **Emperor v. Shiva Adar, 9 Bom LR 893**, laid down that the power given to the Court under Section 5 of the Limitation Act to condone the delay has to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood and delay in filing an appeal ought not to be excused unless there are special circumstances. While dealing with an application under Section 5 of the Limitations Act, the Courts are always influenced by the considerations whether the extensions of the period of the limitation is likely to affect the rights which have come to vest in the opposite party efflux of time. When the time for filing an appeal has once passed, a very valuable right is secured to the successful litigant.

As regards the delay in filing an criminal appeal, there is an important distinction between the State and the accused. No right can be said to vest in the State to have the conviction of an innocent person upheld; but a very clear right comes to vest in the accused/private person by efflux of time and he is entitled to claim that, save in exceptional circumstances delay in filing the appeal should not be condoned.

In *State of Assam v. Haji Habib, AIR 1952 Assam 48*, it was held that the language of the Statute does not justify any discrimination between the State and the subject and the case, therefore, has to be decided on general principles which apply to all ordinary litigants who may have to apply for the condonation of delay under Section 5 of the Limitation Act.

Even on merits, the applicant has not made out any ground to establish that the judgment passed by the trial Court suffers from infirmity and illegality. The trial Court rightly observed that as per Indian Evidence Act Form No.32 as photocopy is not proved by the complainant and as such the same cannot read into evidence, so the plea which is taken by the complainant that he is authorized to file the present complaint that is not tenable as complainant himself is not competent to file the present complaint because Ex.C1 through which he has shown the Court that he is authorized to file the complaint that document itself is not proved by the complainant because as director Madhur Kochhar of Panipat Hire Purchase and Leasing Pvt. Ltd., complainant failed to show that he is competent to file the complaint, so complaint is not maintainable on this ground.

Further the version of the complainant was rightly held to be not maintainable regarding the advancement of loan qua Ex.C2 and Ex.C4

because as per the Memorandum and Articles of Association the applicant was required to maintain the account books and in the present case no physical record was maintained and only computerized record was available with him and except Ex.C2 and Ex.C4 nothing was produced by him to show that he has maintained the account. Besides, the complainant has not given any loan account number qua the present loan. As such the applicant has failed to prove that he is competent to file the present complaint.

In this view of the matter, no ground, much less sufficient and cogent, has been made out by the applicant/appellant for the purpose of condonation of delay of 682 days in filing the appeal as well as on merits.

Dismissed.

07.12.2022
V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No